Pontiac Care and Rehabilitation Center *and* 1199 NY Upstate Division, SEIU, AFL–CIO. Case 3–CA–24724

May 31, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On September 28, 2004, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pontiac Care and Rehabilitation Center, Oswego, New York its officers, agents, successors, assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. May 31, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Nicole Roberts and *Linda M. Kowalski, Esqs.*, for the General Counsel.

Aaron C. Schlesinger, Esq. (Peckar & Abramson), of River Edge, New Jersey, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Oswego, New York on July 27–29, 2004. The charge was filed on February 27, 2004 and amended on March 23, April 7 and 13, 2004. The complaint was issued May 25, 2004.

The General Counsel alleges that Respondent, Pontiac Care and Rehabilitation Center, violated Section 8(a)(1) of the Act by threatening and interrogating employees, by giving employees the impression that their union activities were under surveillance, by engaging in surveillance of employees' union activities and by prohibiting employees from wearing carnations as a show of support for the Union. The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) by suspending and then discharging employee Rebecca Gibson on March 25–29, 2004.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, Pontiac Care and Rehabilitation Center, operates a 2-story nursing home in Oswego, New York. It derives gross revenues in excess of $100,000 and purchases and receives goods and materials valued in excess of $5,000 directly from points outside of the State of New York. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Local 1199, New York Upstate Division, Service Employees International Union (SEIU), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Union began its organizing campaign at Respondent's nursing home in late January or early February 2004. Local 1199 filed a representation petition with the NLRB on February 25, withdrew this petition and then refiled it on March 9. The Union held a rally across the street from the nursing home on

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] There are no exceptions to the judge's recommended dismissal of 8(a)(1) allegations that: (1) the Respondent threatened employees with a loss of future wage increases and with the reduction of their current wages; (2) the Respondent engaged in various acts of surveillance of employees' union activities; and (3) the Respondent prohibited employees from wearing carnations as a show of support for the Union.

Member Schaumber finds it unnecessary to pass on the judge's finding that the Respondent violated Sec. 8(a)(1) by its interrogation of employee Stout because any such finding would be cumulative in light of his agreement with the judge's findings that the Respondent violated Sec. 8(a)(1) by its interrogations of employee Maldonado and employee Ives.

the afternoon of March 17. A representation election was conducted in April in which 36 employees voted to choose the Union as their collective-bargaining representative and 20 voted against representation. The Respondent has filed objections to the election, which are currently pending before the Board.

B. Section 8(a)(1) Allegations

1. Alleged threats at the February 25, 2004 in-service training meeting (Complaint Paragraphs VI(a) & (b))

At about 7 a.m. on February 25, 2004, several hours before Respondent received a copy of the representation petition, its Director of Nursing, Helen Verceles, conducted an in-service training session for several registered nurses (RNs) and licensed practical nurses (LPNs). Two of the General Counsel's witnesses, alleged discriminatee Rebecca Gibson and former employee Pamela Bedford, testified that at the end of the meeting Verceles told the nurses that if employees selected the Union that they would not receive raises that they would otherwise receive in June or July and that Cosimo Mastropierro, Respondent's owner, would reduce their pay to $5.15 an hour. Respondent did not elicit any evidence that Bedford had a motive to fabricate her testimony.

However, Verceles denies this, denies mentioning the Union and denies even being aware of union activity at the nursing home at the time of the in-service meeting. Two of Respondent's witnesses, who also attended the meeting, RN Susan Schaeffer and LPN Janette Farley, also testified that Verceles said no such thing. Despite the absence of any evidence undermining Bedford's credibility, I credit Respondent's witnesses. First of all, there is no evidence establishing that Respondent was aware of union activity prior to the February 25 meeting. Secondly, I deem it very implausible that Verceles would threaten employees who made over $12 an hour, with a reduction to the minimum wage. It is implausible that any employee would find such a threat credible. It is highly unlikely that Respondent would be able to retain any LPNs and RNs to manage their facility at the minimum wage. Given these credibility resolutions, I dismiss Complaint paragraphs VI(a) and (b).

2. Alleged interrogation and requests for information about employee union activity by Supervisor Kimberly Norton (Complaint Paragraph VI(d))

Heather Seaman-Stout, a Certified Nursing Assistant (CNA), currently employed by Respondent, testified that on February 26, 2004, she walked out of Respondent's linen room to find RN Kimberly Norton, a supervisor, discussing the Union with two other CNAs. According to Stout, Norton then asked her what she thought of the Union. Stout had not indicated whether she favored or opposed the Union previously. Stout testified that Norton then said for Stout to "keep her ears open."[1] Norton then recounted how she had been a member of the Union at one time and that the Union had not been responsive when she had requested its assistance.

Norton, who left Pontiac on July 5, 2004, testified that she discussed her experience with the Union with other employees. Norton testified that she doesn't "specifically" recall discussing the Union with Stout. She also testified that she never asked employees if they "if they were pro or anti-union." Norton testified that she didn't *recall* asking any employee what they thought about the Union. Finally, Norton testified that she never asked any employees to inform her about the union membership or sympathies of any other employees.

I credit Stout and find that Respondent, by Norton, violated Section 8(a)(1), as alleged in Complaint paragraph VI(d) (1) by coercively interrogating an employee, who had not previously demonstrated her support for the Union. Norton's testimony did not directly contradict Stout. She answered carefully phrased leading questions to avoid having to do so. On the other hand, I find Stout's testimony too vague to conclude that Norton was suggesting that Stout report to her regarding the union sympathies or activities of other employees. "Keep your ears open" may have merely conveyed Norton's belief that Stout should listen to what negative things people had to say about the Union.

3. Alleged threat and interrogation by Unit Manager Valerie Rose on or about March 8, 2004 (Complaint Paragraphs VI(c) and (f))

Jasmine Maldonado, a certified nursing assistant still employed by Respondent, testified about a conversation she had with Unit Manager Valerie Rose on March 8, 2004. According to Maldonado, she walked into Rose's office to get her purse before going on her break, and Rose asked her whether she was for the Union, against it or "on the fence." Maldonado testified that Rose told her that Respondent's Owner, Coismo Masterpierro, would cut employees' pay to $5.50 an hour if they selected the Union in a representation election. She continued to testify that Rose told her benefits such as health insurance could be lost in negotiations in exchange for other benefits employees might want.

Valerie Rose's testimony as to these matters appears at pages 496–500 of the transcript. Rose essentially conceded that she had a conversation with Maldonado about the Union, although she contends that it was Maldonado who initiated it. Upon objection by the General Counsel, Respondent's counsel withdrew the following question:

> Q. Did you ever ask any employee if they were for or against the Union? (Tr. 497)
> A. A minute later, I told Respondent's counsel that I thought the question was appropriate and that I would overrule an objection to it. He continued,
> Q. Did you ever ask any employees if they were pro or against the Union?
> A. Never asked them outright, no. Never.
> Q. Did you ever make any inquiry at all about any employees—
> A. No, I —
> Q. —feelings about the Union?
> A. No, sir, I didn't. I have too much work to do to worry about that.

Tr. 498.

[1] After a prompt from the General Counsel, Stout testified that Norton told her to let her know if "anyone else is talking or whatever."

Later, Rose testified as to how she explained the negotiation process to employees. When I asked her specifically whether she ever offered employees an opinion as to what would happen to wages if employees selected the Union, Rose did not answer directly but testified that the only thing she ever talked about was the give and take of negotiations (Tr. 500).

I credit Maldonado's testimony and find that Respondent, by Valerie Rose, inquired about her union sympathies and intimated that Respondent would lower wages if employees selected the Union. Rose's response that she never asked about employees' union sympathies "outright" suggests that she did so indirectly. Her unwillingness to specifically contradict Maldonado both with regard to the interrogation and the suggestion that Respondent would lower wages, leads me to believe Maldonado's account. Therefore, I find that Respondent violated Section 8(a)(1) as alleged in Complaint paragraphs VI(c) and (f).

4. Alleged threats and conveyance of the impression of surveillance by Helen Verceles in early March 2004 (Complaint Paragraphs VI(e), (h), and (i)).

Jasmine Maldonado also testified that on March 11, 2004, she was summoned to Administrator Brian Chamberlin's office. Chamberlin and Verceles assured Maldonado that her health insurance, which had lapsed during her maternity leave, was currently in force. Afterwards, she testified that Verceles asked her to go into her office, where Verceles spoke to her alone. Maldonado testified:

> I was told that it had been observed that I speak to Rebecca Gibson often on the unit. I was also told that I should [not] believe what I hear from other people and things like that. And, you know, if a union was voted in, that it wouldn't be such a friendly, laid back place. She would have to do things by the book. That Pontiac had done a lot for me and, it would no longer be that way.

Tr. 298.

On cross-examination, after being shown her affidavit, Maldonado testified that she was told that her health insurance was being reinstated. She also testified that Verceles told her that she did not care if Maldonado spoke to Becky Gibson, but that Verceles wanted her to see the big picture and that Verceles did not care if Maldonado signed an authorization card or attended union meetings. Finally, she testified that Verceles told her to look at "our side as well as the Union's side" (Tr. 312). On redirect examination (Tr. 329), Maldonado testified that Verceles did not say what specifically Maldonado and Gibson were talking about when they were observed. However, her testimony, if credited, would lead me to be believe that Verceles was intimating to Maldonado that she had been observed discussing the Union with Gibson, and I infer from this that Verceles knew or suspected that Gibson was a union supporter.

Verceles testified very briefly about her meeting with Maldonado (Tr. 397–98). She discussed the meeting with Maldonado in Brian Chamberlin's office regarding Maldonado's health insurance. Verceles did not address Maldonado's testimony that there was a second meeting in Verceles' office afterwards. Thus, she did not specifically take issue with any of Maldonado's assertions. Among Maldonado's uncontradicted assertions is that Verceles told her that she had been observed speaking to Rebecca Gibson and that she shouldn't believe everything she was told by other employees. In the absence of an alternative explanation, I infer that Verceles meant that Maldonado was observed speaking to Gibson and that they were observed when Gibson was speaking in favor of the Union.

After Verceles testified about the meeting with Maldonado, Respondent's counsel asked her if she knew Cecilia Ives. Ives, a certified nursing assistant who has worked at Pontiac for 16 years, testified that on March 4, 2004, Verceles spoke to her in Tagalog or Tagalo, one of the principal Filipino languages, in Respondent's dining room (Tr. 351).[2] Ives testified that Verceles asked her if, "I'm one of them," but that Ives didn't understand what Verceles meant. Ives then testified that Verceles told her that Cosimo Masterpierro would lower wages if employees selected the Union.

Respondent's counsel asked Verceles on direct if she ever had any discussions with Ives about the Union. Verceles answered in the negative. Then Respondent's counsel asked, "Did you have any discussions with any other employee about the Union?" Verceles again answered, No (Tr. 398). This question and answer are ambiguous, in that it is not clear whether "any other employee" refers to Ives and Maldonado, or merely Ives.

Given this ambiguity and Respondent's failure to directly contradict Maldonado's testimony, I credit Maldonado and find that Respondent, by Verceles, violated Section 8(a)(1) by giving the impression that employees' union activities were under surveillance and that Respondent's rules and policies would be more strictly enforced if employees chose the Union, as alleged in Complaint Paragraph VI(h).[3]

Similarly, I find that Verceles' response to counsel's question as to whether she had any discussions about the Union with Ives, does not directly contradict Ives' testimony that Verceles asked her "If she was one of them," or that she told Ives that Masterpierro would lower employees' wages. I therefore credit Ives and find that Respondent, by Helen Verceles, violated Section 8(a)(1), as alleged in Complaint Paragraph VI(i).[4]

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[2] Tagalo is rendered "Pigalo" in the transcript.

[3] As the General Counsel points out at page 38 of his brief, Verceles' comment regarding how Respondent would be less flexible if employees selected the Union, is particularly coercive in light of the fact that Respondent had just intimated to Maldonado that it had done her a favor by reinstituting her health insurance. The comment carries with it a not too subtle suggestion that if employees were to select the Union, management would not make such accommodations on behalf of Maldonado or any other employee.

[4] In this regard, in crediting these two current employees, Maldonado and Ives (who worked at Pontiac for 16 years), I also rely on the fact that Respondent made virtually no effort to attack the credibility of either one of them on cross-examination.

5. Allegations of management surveillance of employees' union activities on nights and weekends in March 2004 and during the Union's St. Patrick's Day rally (Complaint Paragraphs VI(g) and (j))

Pamela Bedford worked 4 years for Respondent and then was terminated in June 2003. She was rehired in September 2003 and worked at Pontiac until May 2004. Bedford testified that during her last 8 months she worked the 11 p.m. to 7 a.m. shift. During that period she observed her unit manager at the facility during her shift on only one occasion. In late March or April 2004, Valerie Rose came to nursing home at 4 a.m. When Bedford saw Rose she said, "See, we are doing our jobs. We're not sleeping." Rose said she knew that because she had been standing by the time clock for 10 minutes and could hear Bedford and the other staff people on duty. Rose then walked up the back stairs to the second floor.

Bedford also testified that Supervisor Kim Norton told her that when she was working the day shift, Norton had been asked to come in early on one of her shifts to check up on the night shift. There is no indication as to when this occurred. Bedford also testified that throughout her last 8 months, Director of Nursing Helen Verceles came to the facility during her shift if a resident died and on other occasions to do paperwork.

Jasmine Maldonado testified that she worked 7 a.m. to 3 p.m. on every other weekend from January through May and that during that time she saw Respondent's upper level management at the facility only once—on a Saturday and Sunday on the same weekend. On these days she saw Administrator Brian Chamberlin, Office Manager Theresa Moshier and Social Worker Renee Ackles.

Respondent offered no evidence as to the reasons Bedford and Maldonado observed upper management personnel on these occasions. However, the General Counsel did not make a prima facie case that these individuals came to the facility in whole or in part to engage in the surveillance of union activity. I therefore dismiss Complaint Paragraph VI(g).

6. The St. Patrick's Day rally

The Union held a rally in an open area diagonally across from the Nursing Home from 2 or 2:30 p.m. to either 4 or 5 p.m. on St. Patrick's Day, March 17, 2004. Employees held up signs encouraging passing motorists to honk their horns in support of the Union and employee Alice Griffin dressed up in a leprechaun costume for the rally and there was a "pot of gold" stage prop.

The allegations of surveillance are based on testimony that members of management, including Administrator Brian Chamberlin, Nursing Director Helen Verceles, and Dietary Director Joseph Wells, stopped to look out of the window of the facility at the rally for several minutes at a time. Rank and file employees did so as well. Chamberlin told employees inside the facility that they should go across the street to get their pot of gold. I assume Chamberlin was being facetious. The following day, Helen Verceles asked Griffin how she liked dressing up for the rally.

LPN Nicole Culp and Jasmine Maldonado observed Joseph Verceles, Respondent's Director of Housekeeping and Purchasing, and Victor Scoritano, the Director of Maintenance, sitting in a Scoritano's parked vehicle in Respondent's lot facing the rally, for a few minutes. Employee Randi Stevens saw Scoritano doing paperwork in his vehicle during the rally. Alice Griffin testified that she observed Brian Chamberlin get into Scoritano's vehicle.

Respondent offered no testimony regarding these allegations. However, the General Counsel's uncontradicted evidence does not establish a violation of Section 8(a)(1).

> The idea behind finding, "an impression of surveillance" as a violation of Section 8(a)(1) of the Act is that employees should be free to participate in union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways . . . an employer creates an impression of surveillance by indicating that it is closely monitoring the degree of an employee's union involvement.

Flexsteel Industries, 311 NLRB 257 (1993).

Nevertheless, it is not a violation of the Act for an employer to merely observe open union activity, *Hoschton Garment Co.*, 279 NLRB 565, 567 (1986); *Fred'k Wallace & Son*, 331 NLRB 914 (2000). On the other hand, even with regard to open union activity, an employer violates the Act if it takes down names or videotapes the employees. Under this standard the only management activities that raises any issues of illegal conduct are Helen Verceles' comment to Alice Griffin about her costume, and the fact that Dietary Director Joseph Wells, while standing at the window, verbally tried to identify people and commented on Alice Griffin's leprechaun outfit (Tr. 304). I deem this insufficient to find that Respondent was creating the impression of surveillance, or engaging in unlawful surveillance. I therefore dismiss Complaint Paragraph VI(j).

The instant case is easily distinguished from Fred'k Wallace, supra. There management personnel, who were not present during employees' conversations with union organizers, took great pains to make sure that the employees knew that management knew what transpired. Additionally, the employer interrogated an employee about his conversation with union organizers. Here, there is no evidence that Respondent attempted to record the identity of employees who attended the rally. Moreover, while the employee in Wallace may have had an expectation that higher level management would not observe his union activities, the participants in the March 17 rally across the street from Respondent's nursing home should have reasonably expected that every management official present that day would observe the rally and notice who was there—particularly someone like Griffin who wore a costume for the occasion.

7. Respondent's refusal to allow employees to wear carnations at its facility on March 17, 2004, to show their support for the Union (Complaint Paragraph VI(k)).

On the morning of March 17, 2004, the same day as the Union's public rally, Local 1199 attempted to have its supporters wear a carnation with a purple ribbon at work.[5] In the presence of rank and file employees, Administrator Brian Chamberlin

[5] The purple ribbon signified support for the SEIU and I infer that Respondent's management was aware that it did so.

told Unit Manager Valerie Rose to have employees remove the flowers because the straight pin affixing the flowers posed a danger to the nursing home's residents. Chamberlin initially told cook Alice Griffin to remove her flower only if she was going to come into contact with the residents. Later, however, he directed Dietary Supervisor Joseph Wells to have Griffin and other cooks remove the flowers on the grounds that the carnations might fall into the food.

Respondent made no attempt to prohibit union supporters from wearing other union badges or insignia at work and employees wore such insignia. However, on Nurse's Day in 2003, Respondent distributed flowers for the nurses to wear on duty. These also were affixed with a straight pin.

In general, employees have a protected right under Section 7 of the Act to make known their concerns and grievances pertaining to the employment relationship, which includes wearing union insignia or buttons at work, *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945). Section 7 rights, however, may give way when "special circumstances" override the employees' Section 7 interests and legitimatize the regulation of such apparel. However, rules forbidding organizational activities in the patient care areas of a health care facility are not presumptively invalid, *Beth Israel Hospital v. NLRB*, 438 U.S. 483, 506 (1978).

Absent the fact that Respondent gave its nurses flowers to wear on Nurses' Day, it would be clear that Respondent could prohibit nurses from wearing flowers with a pin in patient care areas. Pamela Bedford conceded that nurses have to lift patients on occasion and that a patient could be stuck with the pin. Similarly, I find that Respondent has established sufficient special circumstances with regard to the resident's food to lawfully prohibit the wearing of the carnations by its cooks.

Despite the fact that Respondent appears to promote the wearing of flowers affixed by pins on Nurse's Day, I decline to find a violation of Section 8(a)(1) simply on the basis on this inconsistency. Respondent allowed employees to demonstrate their support for the Union by wearing several other forms of insignia, such as badges and purple clothing. Thus, in balancing Respondent's interest in protecting its residents and the employees' right to organize, I conclude that Pontiac was entitled to prohibit the wearing of carnations affixed with a straight pin. Moreover, in light of the fact that Respondent did not interfere with employees' right to wear other forms of union insignia, I deem that prohibiting the wearing of the carnations was at worst a de minimis violation of the Act, *Yellow Ambulance Service*, 342 NLRB No. 77, slip opinion at page 7 (2004). I therefore dismiss Complaint Paragraph VI(k).

8. The suspension and termination of Rebecca Gibson (Complaint Paragraphs 7(c) & (d))

Respondent initially hired Rebecca Gibson, an LPN, in September 2001. Nine months later she quit without giving notice. In September 2002, Helen Verceles rehired Gibson for the day shift where she worked until March 25, 2004, when she was terminated. Gibson committed a "medication error" on November 7, 2003, by withholding Dilantin from a patient on the wrong date. She committed another medication error when she gave a blood pressure medication at 8 a.m. instead of 8 p.m. on December 5, 2003. Nurses at Pontiac commit similar medication errors on a recurring basis, either several times a month or possibly even several times a week. Almost all the nurses employed by Respondent, if not all, have committed a medication error at some time during their employment.

Director of Nursing Helen Verceles conducts quarterly meetings with the nurses in which she issues discipline for errors committed during the last quarter. Pursuant to Respondent's Medication Error Policy (GC Exh. 3) the Nurse Manager or Supervisor conducts a verbal counseling for nurses who have accumulated 1–15 points and a written counseling if a nurse has accumulated 16–30 points. The policy provides that, "points are cumulative. To have points removed, employee must be error free for one year."

Verceles conducted a written counseling for Gibson on March 23, 2004.[6] She gave Gibson a written warning and assessed 21 disciplinary points for the November and December 2003 errors, based on a number of factors including the type of error and type of drug (GC Exh. 7). Verceles issued a written warning dated March 22, 2004 to Janna Purchase, assessing 29 points for medication errors and verbal warnings the same day to Kimberly Jeremenko (15 points) and Nicole Kulp (14 points) (GC Exhs. 11, 20, and 28).

Respondent's procedure for the distribution of medications is that they are put on a cart in a blister pack, and as the nurse comes to each resident's room, the nurse puts that resident's medications into a paper cup. The nurse then initials each block on the Medication Administration Record (MAR) to attest to the fact that the resident has received his or her prescribed medications. Nurses then take the cup into the patient's room and insure that the resident takes his or her medication. If the resident refuses or is unable to do so, the RN or LPN circles the nurse's initials on the MAR and writes an explanation as to why the medication was not taken on the back of the MAR, R. Exh. 1.[7]

On Thursday, March 25, 2004, starting at about 7 a.m., Gibson, who was the only LPN on the first floor, other than Unit Manager Valerie Rose, passed out medications to the residents on her floor.[8] At the room of a resident who was suffering from dementia, she circled the blocks for eight medications but left the cup with pills in the room without observing the patient taking the medications. Gibson testified that she did not do so because a certified nursing assistant interrupted her and indicated that she thought there was an emergency with a resident in another room.[9] Director of Nursing Verceles and Unit Manager Valerie Rose discovered the pills in the room about noon.

At about 10 a.m., the same morning, Gibson was sitting at the nurse's station doing paperwork when Certified Nursing

[6] Although the warning is dated March 22, Verceles most likely met with Gibson on March 23, as Gibson initially testified. Exh. R-6 suggests that Gibson worked on March 23, but not on March 22.

[7] Some residents are allowed to self-medicate in certain circumstances. In such cases the nurse does not have to insure that the medications are taken.

[8] There are generally 35–40 residents per floor.

[9] Certified Nursing Assistants cannot pass out medications or perform treatments ordered by a physician. They generally assist residents in personal tasks such as bathing, using the toilet, etc.

Assistant Alethea Matott approached the station and told Gibson and Unit Manager Valerie Rose that a patient's bandage had fallen off of his foot.[10] Gibson testified that Rose said nothing at this time. Rose, on the other hand, testified that she said, "you guys have work to do." I credit Rose in that I find she said something to indicate that Gibson should attend to the bandage. Her testimony regarding "you guys" doesn't make literal sense in that Matott could not have replaced the bandage or performed the treatment. However, Gibson signed a warning notice that states that she was told to do the treatment.

Gibson continued to do her paperwork. Rose testified that a half-hour later, the same nurse's assistant returned to the nurse's station and told Rose that there was still no bandage on the patient's foot. Matott, called as a rebuttal witness by the General Counsel, does not recall either going into the resident's room a second time or talking to Rose about the bandage a second time. However, Matott was not the only certified nurse's assistant on duty that day.

Rose testified that she told Gibson that she shouldn't be doing paperwork, she needed to go do "the treatment." The doctor's orders required that on the day shift that accuzyme be applied to the right lateral foot of the patient after it was cleaned with wound cleaner. A dry dressing was then to be applied (Tr. 195; R. Exh. 6). Gibson testified that neither Matott nor Rose indicated that replacing the bandage was an emergency and that she planned to do it sometime during her shift when she performed the treatment in accordance with the doctor's orders. Gibson concedes that the wound was open and that leaving it uncovered exposed the resident to the risk of infection. However, she testified that bandages fall off residents all the time and she did not believe that Matott's report called for immediate attention to the resident. She also testified that Rose did not indicate to her that she needed to immediately replace the bandage.

At about 11 a.m., Gibson went to an in-service training session. When she returned, Valerie Rose told Gibson that Rose had replaced the bandage. Gibson denies that Rose at anytime said anything else to her about this matter. I credit her testimony in this regard. Gibson concedes that she initialed the treatment book signifying that she had performed the treatment for the patient when she had not done so. However, she testified that later in the day she performed other treatments on this patient; putting bandages on his hips and attending to his G-tube site.

Rose reported the incident to Helen Verceles. At trial, Rose testified that she told Verceles that she had told Gibson to do the treatment (which would include replacing the bandage) twice and that Gibson refused to do so. Gibson denies refusing to perform the treatment and refusing to replace the bandage. Her termination notice (GC Exh. 8) states:

> Failure to render a personal service to a resident.
>
> Failure to comply with infection control issues.
> Neglect of resident needs.
> Was told to do the treatment. Did not do the treatment.
>
> Failure to do treatment under direct order
> Insubordination
> CNA told nurse wound was exposed and draining.[11]

I find that Gibson did not affirmatively state or indicate that she would not do the treatment or replace the bandage. I conclude that she simply didn't do it in a timely fashion.

At the end of Gibson's shift on March 25, Rose escorted her to Helen Verceles' office. Verceles told Gibson that she was suspending her for 2 days (March 26 and 29) for insubordination on account of her failure to replace the resident's bandage. She also told Gibson that she was going to investigate the medication error and that Gibson should call her on Monday morning, March 29, to find out the result. Verceles then called the New York State Department to Health regarding Gibson's failure to replace the bandage and do the treatment on the patient's right foot. She also sent documentation to the State Board of Professions regarding Gibson's March 25 medication error.

Verceles testified that her investigation consisted of determining which medications Gibson had left in the resident's room. She calculated that Gibson incurred 56 disciplinary points for the March 25 medication error (based in large part on the number and type of medications left in the cup), which when added to her 21 points from the fall totaled 77 points. Respondent's Medication Error Policy (GC Exh. 3, p. 2) provides that a nurse with 46–60 disciplinary points will be suspended for 3 days and that "after review of work record and discussion with the Director of Nursing, will be terminated, if warranted." Verceles does not contend that Gibson was terminated simply on the basis of the number of points she had accumulated, but rather due to Verceles' cumulative assessment of the two incidents on March 25.

Nursing Home Administrator Brian Chamberlin and Verceles met on Monday morning to discuss Gibson. Neither testified as to what was discussed or whether any penalty less severe than termination was considered. After this meeting, Gibson called Respondent. Verceles then informed Gibson that she was being terminated as the result of the two March 25 incidents.

III. ANALYSIS

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel must generally make an initial showing that (1) the employee was engaged in protected activity; (2) the employer was aware of the activity; and (3) that animus towards the protected activity was a substantial or motivating reason for the employer's action. Once the General Counsel makes this initial showing, the burden of persuasion shifts to the Respondent to prove its affirmative defense that it would

[10] Rose testified that the nurse's assistant said that the patient's wound was bleeding on the sheets, (Tr. 501, 519); Gibson denies this (Tr. 193). Althea Matott, the certified nurses assistant in question, testified that all she said to Rose and Gibson was that a certain resident had to have a dressing put on (Tr. 530). I credit Matott, a witness who has no apparent stake in the outcome of this matter.

[11] Gibson denies that the last three lines were on her termination notice when she signed it. Based on Matott's testimony, I do not find that she told Gibson that the wound was exposed and draining. I assume Gibson knew the resident had an open wound on his foot from treating him prior to March 25, Exh. R-6.

have taken the same action even if the employee had not engaged in protected activity, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (lst Cir. 1981); *La Gloria Oil and Gas Co.*, 337 NLRB 1120 (2002).

The Board requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *American Gardens Management Co.*, 338 NLRB 644 (2002). Unlawful motivation is most often established by indirect or circumstantial evidence, such as the suspicious timing of disciplinary action, pretextual reasons given for the discipline and disparate treatment of the discriminatee(s) compared with employees without known union sympathies.

1. The record evidence with regard to Gibson's union activity, Respondent's knowledge of that activity and its animus towards Gibson's union activity

Apart from Gibson's testimony, there is virtually no direct evidence that Gibson engaged in union activity. On the other hand, there is no evidence contradicting her testimony that she did so. Gibson testified that she was the employee who initiated contact with the Union. She also testified that several union meetings were held at her home and that she distributed union authorization cards.

There is no evidence that Gibson attended the Union's rally across the street from Respondent's facility on March 17, nor is there any explanation as to why she didn't attend. From Respondent Exhibits 5 and 6 (a MAR and treatment sheet for the month of March), it appears that Gibson may not have worked on March 17.

Gibson testified to meeting with Helen Verceles on March 23, 2004 to discuss her medication errors in November and December 2003. Her testimony is totally uncontradicted in that Verceles did not address the March 23 meeting at all in her testimony.[12]

Significantly, Gibson testified that she was wearing a purple SEIU badge when she met with Verceles alone on March 23. While Verceles testified that Gibson was not wearing such a badge when she met with Gibson on March 25, she did not address Gibson's claim that she was wearing a union badge on the 23rd. Gibson's uncontradicted testimony is as follows:

> Yes, after we had got done discussing the med errors that I had had, she asked
> If I was wearing my Union pin, and I stated yes.
> . . . .
> Yeah, she asked me at that point, what was going on with everybody, and I asked her what she meant, and she stated that I knew what she was talking about. And I said, "About the Union stuff?" and she said "Yes." And I explained to her that people were just upset with stuff that was going on. She asked me "Like what?" I stated that people were upset that they were not getting paid for what was on their timecards and that their vacation time and their sick time was no longer on their paystubs . . .
>
> . . . Helen had asked, stated that she thought that her and I were becoming friends, and I stated so did I. She stated that if I could see myself sitting in her spot in five to 10 years, then me and Pat Poole [a union organizer] can come in and sit down and talk to her . . .
>
> After she had made, I think it was before she made that statement, she told me not to play both sides of the fence and I stated that I wasn't, she knew where I stood.

Tr. 126–27.

Gibson testified that the conversation concluded with Verceles and Gibson discussing why Verceles hadn't been talking to Gibson. She stated that Verceles accused her of "doing this behind my back." According to Gibson, Verceles gestured with her middle finger.

As indicated previously, the testimony of Jasmine Maldonado also suggests that Respondent was aware that Gibson was engaging in union activity. Maldonado's uncontradicted testimony is that on March 11, 2004, immediately after Verceles told Maldonado that she had been observed talking to Gibson, Verceles started a discussion about the Union. Verceles told Maldonado that Pontiac would not be such a friendly place if employees selected the Union. On the basis of the uncontradicted testimony of Gibson and Maldonado I find that Gibson engaged in union activity, Respondent knew or suspected that she was engaged in union activity and bore animus towards her as a result.

The record evidence with regard to discriminatory motive

The National Labor Relations Board may infer discriminatory motive from the record as a whole and under certain circumstances, indeed not uncommonly, infers discrimination in the absence of direct evidence. When the Respondent's stated reasons for its actions are found to be false (i.e., "pretextual reasons"), discriminatory motive may be inferred. In turn, "pretext" is sometimes, if not often, inferred from a blatant disparity in the manner is which an alleged discriminatee is treated as compared with similarly situated employees with no known union sympathies or activities (i.e., disparate treatment), *New Otani Hotel & Garden*, 325 NLRB 928 fn. 2 (1998); *Fluor Daniel, Inc.*, 304 NLRB 970 (1991); *Citizens Investment Services Corp.*, 342 NLRB No. 26, slip opinion at page 15 (2004).

Much if not all of the General Counsel's case of discriminatory motive rests on his contention that Rebecca Gibson's treatment was blatantly disparate when compared to several nurses, for whom there is no evidence of union activity or sympathy. The employees who were treated less severely according to the General Counsel include the following:

2. LPN Kimberly Jeremenko

Kimberly Jeremenko received a Personal Warning Notice from Helen Verceles on October 17, 2003 (GC Exh. 24). This notice listed several deficiencies:

[12] Although the disciplinary warning for Gibson is dated March 22, 2004, her meeting with Verceles occurred on March 23, as Gibson testified. Exhibits R-5 and R-6, a medical administration record and a sheet from the treatment book, indicate that Gibson worked on the 23rd, but not on the 22nd.

Failure to do a treatment on time on October 16;
Some treatments not done.

Between November 21 and 25, 2003, Jeremenko gave the wrong doses of a medication 4 days in a row. Helen Verceles gave her a "verbal warning" and 15 disciplinary points for these errors on March 22, 2004 (GC Exhs. 20, 22).

On the same day as Jeremenko's fourth medication error on November 25, 2003, Verceles suspended her for 2 days for the following omissions:

Treatments not done Room 213A, dated initialed tape still affixed to old dressing (date 11/23) foul odor, soaked dressing removed by D.O.N., U.M.[13]
Koskin-not done
Boltwood treatment-not done
Adelie Gould-dressing not done
C. Green-not done
Treatment book not signed or circled.

Two months later on January 22, 2004, Verceles gave Jeremenko another warning notice. This notice (GC Exh. 21) states that Jeremenko:

[was] asked to do PPD (a tuberculin skin test)[14] for new admits, per job description of charge nurse
PPDs not done

MD in new orders given to Kimberly to take off
4 orders were given by Kimberly to Med Nurse to do.
Others were not called in or faxed by Kimberly J—faxed by 3–11 shift nurse. Kimberly did not punch out until 4:46 p.m.

On Friday, March 26, 2004, the day after Verceles met with Rebecca Gibson, she gave Kimberly Jeremenko another warning. This one, GC Exh. 19, states:

Treatments not done 7-3 shift Room 204B, 208B, 217B. 216
Not signed for, not done, not endorsed to next shift—not signed or circled.

This is 2nd warning further violation will lead to disciplinary measures and/or termination.

As of the instant hearing, Jeremenko was still employed by Respondent. Respondent has never reported Jeremenko to the State Department of Health or the Board of Professional Licensing.

3. LPN Janna Purchase

On November 8, 2003, Purchase failed to administer a dose of dilantin, an anticonvulsant. (GC Exh. 30);

On November 21, 2003, Purchase did not follow the medical administration record for a patient by failing to notify a physician when a resident's blood sugar was low (GC Exh. 31);

On November 23, 2003, she applied a transdermal patch, containing a narcotic, on the wrong day;

On March 22, 2004, Helen Verceles gave Janna Purchase a written warning for the disciplinary point total of 29, incurred for the three November 2003 incidents.

On April 14, 2004, Purchase failed to administer a prescribed dose of dilantin. Prior to April 14, the physician had prescribed phenytoin sodium, an extended 100 mg dilantin capsule. On the 14th, he discontinued the 100 mg capsule and substituted a 200 mg capsule twice daily (bid). Purchase erroneously gave the 100 mg capsule.

Purchase received another warning from Helen Verceles on May 20, 2004. The warning notice states that Purchase failed to do treatments for two second floor residents during her shift and that the treatment record was not signed (Tr. 478). Verceles was warned that a recurrence would lead to further disciplinary action (GC Exh. 28).

Respondent never reported any of Purchase's errors to the New York State Department of Health nor to the State Board of Professional Licensing. Indeed, Purchase was promoted to unit manager in June or July 2004 (Tr. 515).

4. RN Kimberly Norton

Kimberly Norton's employment with Respondent ended voluntarily on July 5, 2004. Norton, who was a Registered Nurse and a supervisor, committed a number of medication errors during the last 6 months of her tenure at Pontiac:

On January 19, 2004, Norton left a cup of with a laxative and vitamins in a patient's room (GC Exh. 10);

On February 3, 2004, Norton failed to give a patient antiarrythmic medication on three occasions (GC Exh. 25);

On February 4, 2004, Norton failed to check the blood sugar of a diabetic patient and administer insulin, which the patient needed as the result of elevated blood sugar (GC Exh. 26);

On February 5, 2004, Norton failed to follow Respondent's safety procedures and protocol by leaving eight pre-filled syringes of vaccine in a refrigerator. This created a risk that the vaccine would become contaminated or that the vaccine would expire before it was administered (GC Exh. 27; Tr. 474–75);

On February 10, 2004, Norton was suspended for the January and February errors—apparently for three days (R. Exh. 12). Norton's suspension notice notes the following:

Accumulated total of 46 points per point system for medication error.
Did not follow facilities protocol for informing MD for unstable condition.
Leaving pre-filled syringes (vaccine) in med room refrigerator.

The calculation of 46 disciplinary points does not include the 19 points assessed for leaving the syringes in the refrigerator. The actual total accumulated by Norton in January and February is 65 points.

On June 11, 2004, Norton gave Adivan, a narcotic to the wrong patient (Tr. 276–82). Nurse Nicole Kulp informed Unit Manager Valerie Rose of the error. There is no evidence that Norton was disciplined for this mistake. This mistake should

[13] D.O.N stands for Director of Nursing; U.M. stands for Unit Manager.
[14] MedicineNet.com; Medterms Dictionary.

have resulted in additional points being assessed under Respondent's medication error policy.

Respondent never reported Norton to the State Department of Health or the Board of Professional Licensing.

5. Other nurses disciplined by Respondent

On March 18, 2004, Respondent suspended Certified Nursing Assistant Jennifer Cahill for insubordination. Cahill walked out of the room during a verbal counseling session with her unit manager and the director of nursing, R. Exh. 13(h).

Respondent has terminated several nurses.[15] Certified Nursing Assistant Tina Mansfield was terminated on May 2, 2003. Mansfield refused to assist Respondent's office manager, Theresa Moshier, in getting residents off a bus and into the building, R. Exh. 13(d) & (e).[16]

On May 7, 2003, Administrator Brian Chamberlin terminated LPN Daneen Bowman. Bowman had made several unauthorized changes in the nurses' work schedules on the same day. Bowman had taken herself off the schedule without approval and was warned that she would be terminated if she was guilty of further misconduct. That night, without authorization, Bowman told another nurse not to report to work, R. Exh. 13(g).

Pontiac terminated Darlene Austine on January 8, 2004 for dishonesty to a direct supervisor; failure to assist with staffing for call-ins; refusing to comply with an order from Verceles to transport and accompany a patient to an appointment on January 7, 2004; using foul language and exhibiting disrespect to management (R. Exh. 13-c).[17]

On June 5, 2004, LPN Kelly Broadwell initially refused to comply with Chamberlin's directive to come into his office and responded, "no fucking way!" Broadwell eventually went into Chamberlin's office where he told her that one nurse must always be in the building and available. Chamberlin also told Broadwell that he would be setting a schedule for nurses' breaks and mealtimes. At this, Broadwell started yelling and swearing at Chamberlin, who fired her, R. Exh. 13(f).

6. Analysis of the disparate treatment evidence and conclusions inferred

First of all, there is no merit to the General Counsel's allegation that Rebecca Gibson was discriminatorily suspended for 2 days on March 25. Her failure to replace the resident's bandage demonstrated a serious lack of judgment, at best, as did her inaccurate completion of the treatment book. The suspension of Kimberly Jeremenko on November 25, 2003 and of Kimberly Norton on February 10, 2004 establishes that Gibson's suspension was not discriminatory, or at least that Respondent met its affirmative burden of proving that Gibson would have been suspended even in the absence of protected activity.

Gibson's termination, however, is a wholly different matter. Respondent admittedly did not fire her for either failing to replace the bandage or failing to insure that the resident took his medications; it contends, however, that the combination of the two errors establishes a nondiscriminatory basis for Gibson's termination.

The record as a whole indicates, however, that Respondent would not have terminated Gibson absent its animus towards her union activity. First of all, with one exception, there is no evidence that Respondent ever reported a nurse other than Gibson to the Department of Health or State Board of Professional Licensing for similar mistakes. Respondent may have reported Linda Wheeler to one or more state agencies prior to time that Verceles became Director of Nursing (Tr. 429). However, Respondent concedes that it did not report Jeremenko, Norton or Purchase to either the Department of Health or Board of Professional Licensing (Tr. 471–472, 475, 488). Additionally, several of the General Counsel's witnesses testified that they were unaware of any nurse who had been reported to either agency (e.g., Pamela Bedford at Tr. 68; Gibson at Tr. 151; former supervisor Cheri Swan [aka Cheri Caldrome] at Tr. 248).

Helen Verceles stated that Gibson's failure to replace the resident's bandage in a timely fashion created "a dignity issue." However, Jeremenko's failure to do prescribed treatments appears to have raised similar "dignity issues," particularly Jeremenko's failure to do a treatment and apply a dry dressing for 2 days between November 23 and 25, 2003. Respondent has offered no evidence distinguishing Jeremenko's situation from Gibson's. Moreover, Jeremenko's failure to do tuberculin skin tests, after having been told to do so in January 2004, is every bit as insubordinate as Gibson's conduct. The day after Respondent fired Gibson, Verceles warned Jeremenko for a second time about her failure to perform prescribed treatments for a number of residents.

Moreover, the fact that Gibson committed two serious errors on the same day does not distinguish her situation from that of Jeremenko, Janna Purchase or Kimberly Norton. Jeremenko committed medication errors at the same time she failed to do a number of treatments in November 2003. The same month Purchase committed three medication errors in a 15-day period. Norton committed significant errors on three successive days (3 on February 3rd) in early February 2004 and was suspended, not terminated. Moreover, Norton incurred 65 disciplinary points in January and February 2004 pursuant to Respondent's medication error policy and additional points in June. If Verceles was "going by the book" in terminating Gibson, as she warned Maldonado, she certainly didn't "go by the book" in administering discipline to Norton.

Although Verceles testified that she was required by law to report Gibson's medication errors to the Department of Health, there is no explanation as to why she did not report the medication errors of other nurses. There is no evidence indicating that Respondent was not required to report these mistakes.

[15] Respondent attempted to introduce evidence that it terminated Nurse Joanne Davenport. The General Counsel objected on the grounds that documents pertaining to Davenport were not properly produced pursuant to its subpoena. In response, Respondent withdrew documentary evidence. As a result, I will not consider her termination in analyzing the motive for Rebecca Gibson's discharge—in so far as this record is concerned, the termination never occurred.

[16] Respondent offered no testimony about the circumstances of Mansfield's termination; it merely introduced documents. Moshier testified, but not about the Mansfield termination.

[17] There is very little in the record as the specific circumstances surrounding Austine's termination; Respondent simply introduced her termination document.

The cases of the nurses who were fired by Respondent are clearly distinguishable from Gibson's situation. In each case, the nurse reacted in a defiant manner to a supervisor or manager's request and in several cases used grossly insubordinate and/or profane language in responding to the request.

In summary, I draw the inference that Respondent would not have terminated Rebecca Gibson for the two March 25, 2004 incidents had it not known or suspected her of union activity and bore animus towards her as a result. I thus find that Respondent violated Section 8(a)(3) and (1) in terminating Rebecca Gibson, as alleged in Complaint Paragraph VII(d). I dismiss the allegation in paragraph VII(c) regarding her two-day suspension.

SUMMARY OF CONCLUSIONS OF LAW

1. Respondent, by Kimberly Norton, violated Section 8(a)(1) in interrogating employee Heather Seaman-Stout about her union activities.

2. Respondent, by Valerie Rose, violated Section 8(a)(1) in interrogating employee Jasmine Maldonado regarding her union sympathies and threatening Maldonado with a reduction of wages if employees selected the Union as their collective-bargaining representative.

3. Respondent, by Helen Verceles, violated Section 8(a)(1) in conveying to Jasmine Maldonado the impression that her discussions with Rebecca Gibson concerning the Union were under surveillance; by threatening unspecified reprisals, i.e. that Respondent's nursing home would not be such a "friendly place" if employees selected the Union as their bargaining representative and by interrogating employee Cecilia Ives about her union sympathies.

4. Respondent violated Section 8(a)(3) and (1) in terminating the employment of Rebecca Gibson on March 29, 2004.

The Respondent having discriminatorily discharged Rebecca Gibson, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

ORDER

The Respondent, Pontiac Care and Rehabilitation Center, Oswego, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Local 1199 New York Upstate Division, Service Employees International Union (SEIU), or any other union.

(b) Coercively interrogating any employee about union support or union activities.

(c) Threatening employees with a reduction in wages or unspecified reprisals if employees select a union as their collective-bargaining representative.

(d) Conveying the impression to employees that their union activities are under surveillance.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Rebecca Gibson full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Rebecca Gibson whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the Decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify Rebecca Gibson in writing that this has been done and that the discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Oswego, New York facility copies of the attached Notice marked "Appendix."[19] Copies of the Notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since February 26, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(g) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. September 28, 2004

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Local 1199 New York Upstate Division, Service Employees International Union (SEIU), or any other union.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten you with a reduction in wages or with unspecified reprisals if you select the Union as your collective bargaining representative.

WE WILL NOT convey the impression to employees that their union activities are under surveillance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Rebecca Gibson full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Rebecca Gibson whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest.

WE WILL , within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Rebecca Gibson, and WE WILL , within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

PONTIAC CARE AND REHABILITATION CENTER